



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Review of Special Educational Needs:
Ministerial Briefing

16 May 2012

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Mr Danny Kinahan (Deputy Chairperson)
Ms Michaela Boyle
Mr Jonathan Craig
Mr Trevor Lunn
Miss Michelle McIlveen
Mr Daithí McKay
Mr Sean Rogers

Witnesses:

Mr John O'Dowd	The Minister of Education
Mrs Dorothy Angus	Department of Education
Mrs Irene Murphy	Department of Education

The Chairperson: Minister, you are very welcome. Irene and Dorothy, you are welcome as well; thank you for coming. Minister, you have tabled a document with us this morning.

Mr John O'Dowd (The Minister of Education): I have.

The Chairperson: I trust you are not learning the bad habits of some of your officials who table documents at a late stage, as you, as a former member of this Committee, will well remember. You will undoubtedly speak to this document as well, which seem to contain proposals.

Mr O'Dowd: It is a proposal at this stage to the Education Committee for further scrutiny. I appreciate that it is a quite lengthy and detailed document. I will speak to it and take out the main points. I am happy to take questions on it, and I am happy to come back to the Committee after members have had further opportunity to discuss the matter.

The Chairperson: Just one point of clarification in relation to your time. I want to ensure that everybody has an opportunity.

Mr O'Dowd: Approximately an hour and a half, if that is OK.

The Chairperson: Yes, that is fine.

Mr O'Dowd: As I said, with your approval, Chair, I will speak to the document. If you wish, I will take questions at the conclusion, or if you want me to stop going through.

The review of special educational needs and inclusion made a broad range of high-level proposals covering many of the interrelated areas in the special educational needs (SEN) framework. The policy intention for the SEN framework is to ensure that the child is placed firmly at the centre of the process for identification, assessment, provision and review. Central to the key vision are objectives to: ensure that the needs of a child are met; ensure earlier intervention; reduce bureaucracy; build the capacity of all schools to address SEN; put a clear focus on learning and outcomes for pupils with SEN and other barriers to learning; and ensure transparency and accountability for resources and outcomes. The inclusive framework aims to standardise support across education and library boards and schools, and to make the required interventions more routinely available.

Those are the principles behind the review. I will now turn to a number of the main points in the proposals that I have tabled for the Education Committee today. The purpose of the paper is to allow the Committee to pursue the proposals in detail before I submit a policy memorandum to the Executive. For want of a better phrase, we are still in conversation.

The Chairperson: In fairness, I appreciate that and welcome your clarification. This issue has gone on for a considerable time, and we would appreciate it if we could get some idea as to when you require us to come back with opinions and views so that we are not holding up your taking of a conclusive decision in the form of a policy memorandum to the Executive.

Mr O'Dowd: I would like to be able to submit a policy memorandum to the Executive before the summer recess. Does that suit your timetable?

The Chairperson: Yes. Members should bear that in mind, and we will amend our work programme to reflect that.

Mr O'Dowd: As I say, if you wish, I can return to the Committee. My officials will certainly be available to the Committee for further discussions.

The Chairperson: Thank you.

Mr O'Dowd: I now move on to a number of the main proposals in the document that I have tabled with the Committee today. The early identification and intervention framework is one of the key areas of the SEN review. Following consultation, the proposal is that a majority of children with SEN and/or disabilities should have their special educational needs addressed in their school settings. There is significant evidence from Education and Training Inspectorate reports that many schools can meet the needs of the majority of children without external support from the education and library boards (ELBs). Other schools will require specialist external support to assist in meeting the needs of some children.

Therefore, I propose to strengthen the existing statutory duty on boards of governors of ordinary or mainstream schools to identify, assess and make provision for children with SEN and/or disabilities in schools. In addition, guidance in a revised statutory code of practice will encourage further collaboration and sharing of good practice and knowledge across schools' area learning communities, and will also promote the continued professional development of teachers and other school staff. The existing SEN framework sets out the duties of ELBs to make provision for children for whom the ELB is responsible and covers children who have attained the age of two and are not in school and those who are under two. There are no plans to change those statutory duties, which recognise the importance of early identification, assessment and intervention and facilitate an interface with Health and Social Care.

Article 8 of the Education Order 1996, in relation to pupils with SEN, requires:

"The Board of Governors of an ordinary school shall...use its best endeavours, in exercising its functions in relation to the school".

I propose legislative changes to amend the 1996 Order to strengthen the statutory duty on boards of governors, ensure that SEN provision, as appropriate, is made in schools, and require that all schools that are responsible for teaching the child and those supporting the child's education are made aware of the SEN outcomes.

Early identification and intervention and personal learning plans (PLPs) is one of the areas that is quite detailed. The concept behind the original proposal was that PLPs would replace the existing system of individualised education plans (IEPs) for SEN children. It would detail the interventions to be put in place and the outcomes to be achieved. As with IEPs, schools will be responsible for completing PLPs, and they will be reviewed regularly in discussion with parents against the child's progress and outcomes. I propose that PLPs replace IEPs for all SEN children in schools and that they will have a greater emphasis on targets and outcomes. A statutory duty will be placed on boards of governors to ensure that a PLP is put in place for all children on the SEN register in schools, and a revised statutory code of practice will provide guidance on the content, management and review of PLPs in partnership with parents and pupils, with a view to achieving a more meaningful document with greater clarity and consistency than is currently the case for individual education plans. Disputes between schools and parents will first be dealt with through the provision of a statutory dispute avoidance and resolution service. If parents remain concerned that the provision is not meeting the needs of the child, they have the right to request that a statutory assessment be undertaken by the ELB or the Education and Skills Authority (ESA). If the ELB or ESA decides not to carry out a statutory assessment, the parent has a right of appeal to the special educational needs and disability tribunal (SENDIST).

The legislative change proposed in this area is a new statutory duty that requires the boards of governors of all grant-aided schools to ensure that PLPs are put in place, monitored and reviewed on the SEN register. The format of the PLP will be set out in a statutory code of practice.

The Chairperson: I know that members have indicated that they want to come in, but the Minister has said that he is happy to take questions at the time of a particular point being raised.

A requirement is being placed on the board of governors to ensure that a PLP is in place. If there is a failure to implement the PLP, does the grievance — and I know that you have said that, if a parent has an issue, they can request the ELB. However, because the statutory requirement is being placed on the board of governors, is there a risk that we become embroiled in a legal dispute as to who ultimately bears the responsibility? Is it the board of governors, or is it the ELB? Currently, under the special educational needs and disability tribunal, that is all handled by the board on behalf of the board of governors. If you change the legislation, what will be the net legal impact on the board of governors in terms of failure to meet the provisions?

Mr O'Dowd: We certainly wish to avoid dispute, but there will be occasions when disputes arise. I would like to see those dealt with first through the dispute resolution service, the details of which I will come onto later as there are some concerns about the independence of that body. We would much prefer disputes to be dealt with through the dispute resolution service. If a parent is dissatisfied with the provision being provided through a PLP, they have the right to ask for the next stage to be enacted and for the ELBs and boards to come on board and examine the services being delivered to the child.

When you provide statutory provision, there is always the danger that you can end up in a legal wrangle. However, I have listened to parents and advocate groups of young people with SEN. They are very keen to ensure that the framework is set out in legislation as much as possible to give surety and reassurance to parents. I accept that, but I think that we can put in place intermediary measures to avoid getting involved in legal wrangles. I do not wish to see boards of governors or schools bogged down in legal wrangles. I want the dispute resolution service to be involved. If there are disputes between parents and schools, the boards or ESA — whatever is in place at the time — can be asked for an assessment of the child's needs. That will help us to avoid legal disputes but reassure parents that their needs and the needs of the child are being examined and will be met, if they are not being met currently.

Mr Kinahan: I thank the Minister. Following on — *[Interruption.]*

The Chairperson: Somebody's phone is on.

Mr Kinahan: My concern is about governors and their skills. I know that you are planning to train them more. Through the statutory duties, you are putting a lot more of the onus on governors, and they will need more training. That will put off people who are doing a voluntary job, as it means more and more hours in the evenings. Have you looked at that? It concerns me that you are putting too much on them.

Mr O'Dowd: The Member has a point. As I said to the Chair, it is about getting the balance right. Parents have concerns that their statutory rights are being eroded, and we have to bring in measures to reassure them without becoming bogged down in legal and bureaucratic measures. It is worth pointing out, however, that the last Education and Training Inspectorate report found that 82% of our primary schools are very effective in the delivery of SEN and that 62% of our post-primary schools are very effective in the delivery of SEN. From discussions with the inspectorate, we believe that those figures are increasing.

Measures are out there. The skills base of our teaching complement is improving all the time and, therefore, so is that of our boards of governors, which recognise more and more the importance of providing SEN. I am not looking to put in place a big stick to hit boards of governors over the head with. I have put in place measures that I believe reassure parents and are workable in that they have enough safety mechanisms for both parents and boards of governors to ensure that we have a smoothly running system.

The Chairperson: If you do put a big stick in, you will not be asking the board of governors to pay for it?

Mr O'Dowd: No. Well, I certainly do not —

The Chairperson: On the back of the comments that were made in the House yesterday.

Mr O'Dowd: No. We are not, at this stage, at a sanction motivation. This is about giving reassurance. The measures are in place to give reassurance to parents and to allow boards of governors mechanisms that they can look to for assistance and help in these matters.

The Chairperson: On that point, we will try, if we can, to go through this, although we will come back to elements of it. We are on page 15 of the paper on personal learning plans that was given to us this morning. The Minister can then get back to progressing his comments. The paper states:

"The statutory code of practice would indicate that schools may wish to use the PLP framework for other non-SEN ... pupils in order to manage their teaching and learning, but this would not be a statutory duty."

Did that come out as a result of concerns that were raised by parents who had non-statemented children? You can see the rationale as to why you would use that. Where did that —

Mr O'Dowd: There was a concern at the outset of the SEN review that additional-needs children would also fall under the category of SEN and that there might be a dilution of resources going to SEN children. What we are saying here is that there is an option available to boards of governors if they believe that a PLP would assist a child with additional educational needs, but we are not making that a statutory duty. There is an option. It is a matter for the boards of governors whether they want to go down that pathway or not.

The Chairperson: OK, thanks.

Mr O'Dowd: With regard to preschool settings, it was proposed originally that all non-statutory and voluntary and community settings funded through the preschool expansion would fall within the remit of a revised statutory code of practice with SEN. I wish to have further time to deliberate on that. Therefore, it is not proposed to place a statutory duty on ELBs to treat preschool education advisory group (PEAG) settings in exactly the same way as a statutory school setting when considering the educational placement of a SEN statement. We will continue to consider further the implications of such a duty, both in the PEAG settings and the ELBs/ESA, so that all preschool settings can be on a level pegging with the SEN framework. Further consultation is required on that matter.

The Chairperson: Just on that, I assume that one of the reasons is probably the implications that it would have for other Departments, ie, Health. My personal view is that we should put as much as we possibly can in legislation. That will ensure that, whether it is the Department of Health, the Department of Education, the Department for Social Development or whatever Department, if we are looking at the holistic approach or the integrated approach of dealing with the needs of the child, it makes it easier for here to be a statutory requirement as opposed to a voluntary requirement or some sort of gentleman's agreement because, ultimately, the school picks up the problem and the other

Departments do not pick up the cost. I hope that the reason why you want to have more time to deliberate with your colleagues is to ensure that they come up to the mark with regard to what is needed to ensure that this is the best possible framework for the individual child.

Mr O'Dowd: It is a consideration in this area. The more settings that fall under statutory duty, the more implications for resources for other bodies. Our discussions at ministerial level and at official level with the Health Department have been very fruitful. I believe that excellent co-operation is going on at this stage, and I feel that that co-operation will deliver outcomes, not only with regard to SEN but in many, many other areas where health and education interface. We want to have further discussions, both internally in the Department and with our ministerial and departmental colleagues, on how best we deliver on this proposal.

Chair, you may notice that I am skipping some. If members wish to return to some of them, I am more than happy to do so. I am conscious of the time.

With regard to preschool settings and early identification officers, the original proposal was to establish and maintain a core of well-trained early intervention officers to provide appropriate support through statutory and PEAG-funded preschool settings. Following consultation, we have put in place pilot early intervention teams across selected statutory and non-statutory preschool-funded settings. Those pilot teams will support funded settings to identify, assess and meet the needs in-house of the majority of SEN children and provide multidisciplinary support to those children whose needs cannot be met in-house. A multidisciplinary team approach is preferred to that of the single early identification officer to ensure that a mix of skills is readily available to meet needs. A formal evaluation of the pilot will inform the future effectiveness of this approach and will report on the desired balance between in-house and external support for all preschool settings.

The initial teaching and development of teachers is ongoing, and good reports are coming back from those early pilot schemes. We are continuing the rolling development of capacity-building within our schools with input from practitioners. Best-practice resources have been developed to build the capacity of staff through the dissemination of effective teaching and learning strategies for SEN in the classroom. The resources produced to date include a resource file to support SEN children. Three copies of it have been issued to all schools. Materials from the Royal College of Speech and Language Therapists have been presented at the Department of Education (DE) conference in March 2011. The resources produced also include: leadership and management of SEN conferences at post-primary and primary schools; Regional Training Unit (RTU) summer schools; 'Signposts', a SEN resource for Irish-medium schools; and workshops on the themes of literacy and numeracy, etc, which are all rolling out, building capacity for our current teaching staff.

It is not proposed that the learning support co-ordinator — formerly the special educational needs co-ordinator (SENCO) — will be part of the senior management teams of schools. We have had mixed reviews with regard to that proposal from the education sector. At this stage, it is not proposed to make them members of the senior management team. However, that does not in any way belittle the role of that member of staff — or maybe members of staff. It is still a very important role.

The learning support co-ordinator diagnostic testing has also raised concerns among educationalists. They believed that the proposal was that educationalists would be involved in health diagnostic testing. That is not the case, and we have clarified what that role would be and how it would be carried out. Indeed, a certificate of competence in education testing, accredited by the British Psychological Society, will be awarded on successful completion of the relevant course.

Perhaps the most detailed part is the stages of the SEN framework. The current five-stage SEN framework, and the current code of practice, will be replaced by a new model consisting of three strands: within school; within school plus external support; and the co-ordinated support plan (CSP).

The concept behind the proposal for a three-phase SEN framework comes from the fact that parents and/or schools increasingly seek external supports from ELBs for SEN children, which has resulted in an increase in children statemented to the level of 4.2% of the school population. The current framework is administratively bureaucratic for schools, with the first three stages all falling to the school to lead, resulting in inconsistencies in what the schools provide across the three stages. Although all five ELBs manage the statutory assessment processes 4 and 5 largely within the statutory time frame set in regulations, there is evidence that those children who require additional support can wait for lengthy periods at stages 1 to 3.

These proposals go to the heart of the SEN review. This is about removing bureaucracy and stopping feeding the machine, and making sure that services are delivered to the young people as quickly as possible. The shorter processes, we believe, will help and assist that. In my previous discussions with the Committee, I referred to two stages but, in further dialogue with stakeholders, concerns were raised that the two phases might not allow proper space and time for parents to appeal or review decisions. Therefore, I brought it back to three levels, because I believe that that allows for a clearer pathway for the pupil, parent, school and providers.

So, following the proposal consultation, three levels of support will be available to meet the needs of SEN children. Level 1 will be school-led; level 2 will also be school-led, but it will comprise support that some SEN children in mainstream classes will require in order to reduce or remove barriers to learning. It will be provided by the school staff with additional short- or medium-term external specialist support or guidance from ELBs, ESA or other services. The external support will ordinarily be made available to either the school or the pupil and will involve interventions provided in group or individual context. Level 2 of the new framework will equate to stage 3 of the current framework. In terms of level 2 support to schools, ELBs and ESA will have a statutory duty to set out the offer of services that will routinely be made available to schools, so that parents, schools and pupils will understand the services that they can expect to be available.

Level 3 will be board/ESA-led. It will comprise support that some children in mainstream classrooms, all children in learning support centres attached to mainstream schools and all children in special schools will receive, through a statement of needs set out in a co-ordinated support plan. The nature of the support that is required to enable access to the curriculum for this group of children would be such that they could not normally be met in a mainstream class.

Parents will have the same rights of access to dispute resolution and formal appeal mechanisms in the proposed arrangements as they have in the current framework. Where, at any level in the proposed framework, a parent feels that a school is not meeting their child's needs, and they cannot reach agreement with the school, they will be able to take their case to the dispute avoidance and resolution service. Where a parent feels that any education and library board support provided at levels 2 or 3 is not meeting the child's needs, they, again, can access the dispute avoidance and resolution service to request a statutory assessment of that child's needs, or make an appeal to SENDIST about certain decisions by an ELB.

The five stages of the current SEN framework are not set out in legislation, but they are described in detail in the statutory code of practice and guidance. It is proposed that the framework providing three levels of support will be similarly detailed in a revised statutory code of practice. There will be no legislative change in regard to that matter: children and parents' appeals rights will remain as they are now. We are, however, going to reduce the current system from five to three levels that are clearly set out in a statutory code.

The Chairperson: We will pause there. You are absolutely right, Minister, any proposed change to legislation will contain one element that gets more consideration than others. I appreciate that this may or may not be easy to answer, but what are the implications of the L case? I know that you had hoped to come here last week, but could not because you were seeking further clarification on legal issues with, I think, the Human Rights Commission. Members were advised to take a look at the L case because it set out a detailed judgment or assessment of the five stages of the process.

You could conclude that the L case was saying that, in a sense, the bureaucracy of the five stages helped to tease out and identify particular needs and who was responsible for putting services in place to meet those needs. I understand that the board in question is appealing the case, which will obviously have ramifications. However, the general tone of what Judge Treacy said was that those elements were needed in the process to ensure that you came to the right conclusion. Are you confident that that will still be the case after moving from five levels to three? Will we be able to clearly identify the need of the child and, most importantly, who is responsible for meeting the identified need?

Mr O'Dowd: In general, yes. As you said, the L case is now under appeal, which restricts comment on it. However, in general, I am sure that all members here have heard from parents who find the current system very confusing and frustrating. Disputes often arise between the parents and the school, or the school and the board, about whose duty it is to provide services to the child.

The current system is not laid out in legislation; it was laid out in a statutory code that has yet to be published, and to do that would require consultation and further discussion. However, key to bringing

in this system will be clarity to ensure that parents and children know their rights; the school knows its rights; and the education and library boards and ESA know the rights and where all the levels exist within that. We have to ensure that the system is crystal clear so that everyone is aware of it.

Within that, there are also dispute resolution mechanisms. The dispute avoidance and resolution system and SENDIST systems will be there, so that when those different elements come together and cannot reach agreement, there is access — particularly for the parent and child — to an appeals mechanism that will decide on where the rights exist.

The Chairperson: You are aware that we have forwarded all the correspondence. Minister, it is only right that we thank you for the way you have handled the process. We had an event last week in which we brought together stakeholders from a variety of organisations. They had been to see you the same week, and more were to go later. That interaction is welcome.

I will go back to another element, which is the co-ordinated support plan. One of the issues raised was about the term "co-ordinated". To whom does that refer? It is not just the board and not just the school. If it includes the Health Department and is not a statutory requirement, how will you be able to ensure that, even if it has been identified in stages 1 to 3 as opposed to 1 to 5, it can be delivered? That was a particular query raised by Glenveagh Special School.

Mr O'Dowd: My Department cannot place a statutory obligation on another Department. As I said, we are in discussions with the Health Minister and his colleagues, and those discussions will bear fruit in offering reassurance to parents and to the sectors.

You asked about the implications of a co-ordinated support plan. There is a suggestion that we should remove the term "co-ordinated support plan" and just refer to statements. I am open to that discussion if it offers reassurance, because this really is a co-ordinated support plan within the statementing framework as currently laid out. I would use the term "co-ordinated" between Health and Education; the schools and the parents; the parents and the school; and the pupil, the parents and the school. It is about context. However, if the terminology causes concern, let us look at it. I cannot place a statutory obligation on another Department, but I am satisfied that our discussions with the Health Department show that there is good intent in the health service to continue to play a positive role in the provision of special educational and health needs in schools.

Mr Rogers: Minister, you are very welcome. I want to ask you about the early intervention officer option, and I welcome the idea of early intervention. Will such people liaise with the likes of the Sure Start programmes? Will they also liaise with P1 of the primary school, and particularly with children who have not attended preschool for whatever reason? You have already answered the final part of my question, which was about close liaison with the health visitor.

Mr O'Dowd: Area identification officers were flagged up during the first and second stages of the consultation, and we now believe that a multidisciplinary approach will be much better. It is better for a group of people to deal with this issue rather than placing the responsibility on an individual. That group will have the knowledge and the access to all the bodies that you referred to. It will ensure that we have the full picture and understanding of a child's needs and can, therefore, understand what provision needs to be put in place for the child. So, it is not only envisaged, but it will be practised, to ensure that there is a multidisciplinary approach.

Mr Craig: Minister, language seems to be very important in all of this. A number of groups have come to me about the changes. When we talk about the co-ordinated support plan, there is a huge level of confidence in the idea that a child is statemented, and there is a certain level of protection for the parents with that. Maybe you can give us some assurance on the matter. You have assured the Committee in the past, if memory serves me right, that the co-ordinated support plan and the statement will be the same thing basically. Is that definitely the case? If it is, then maybe the language is the only issue that we need to get around.

Mr O'Dowd: The only change that I will make will be the definition of a co-ordinated support plan in legislation. Instead of referring to a "statement", it will refer to a "co-ordinated support plan". All the legislative bases upon which a statement was built will remain in legislation. I agree that language causes much concern when you drill down into the legislation, and understandably so. I understand the frustration of parents who have been battling with the system, and that has been reflected in the responses that we have received. In the document that I have provided today, I have given a very

detailed background to the legislative bases upon which a co-ordinated support plan will be built — and that is the current legislation — and how it will be defined.

As I have said, I have had discussions and dialogue with the Minister of Health and the Department of Health, and I am confident that there we have a working relationship that will be built on going into the future. Even from a selfish point of view, both Departments recognise that there are benefits for the work of both of them in tackling issues surrounding children at the earliest possible stage in their lives and getting it right.

Mr Craig: I welcome that statement, and I welcome those reassurances. Part of the reason why there is so much bureaucracy around the existing system is the huge pressure that parents and families put on the system in order to get a statement for their child — sometimes correctly Minister, I have to be honest with you about that. However, it is not always the case. In the new system, schools, in particular, are going to have to deal with personal learning plans. Obviously, boards of governors and school management may come under horrendous pressure from parents to move that on to stage 2 or stage 3. What checks and balances, and assistance, will be built into the system to ensure that it happens correctly and that mistakes are not made?

Mr O'Dowd: A parent has the right to ask for an assessment. If a child is on a personal learning plan and a parent wishes the child to be assessed, that parent will have the right to ask for the child to be assessed. That will take the pressure off the boards of governors. However, we have to look at the current situation in education. Statementing has been in place since 1986, and we have improved vastly in identifying the needs of young people with special educational needs. One of the reasons why we have in the region of 60,000 young people on the special educational needs register is because schools have become much better at identifying their needs, which range dramatically from minor to major interventions.

Let us accept that at least one in five of our young people will have special educational needs. If we accept that they have the right to educational supports, and if we are to provide them with a proper education, then we have to support them. This is part of our education system; it is not an add-on and it is not special. If we put it at the heart of our education system, then we have to offer reassurance to parents that education will deliver on that commitment.

Making changes to some legislation while keeping other legislation as it is offers reassurances to parents. Groups have told me that there has to be a tribunal system. The Special Educational Needs and Disability Tribunal will remain, and access to it will remain. It is now good practice in government to have a resolution service in place before you get to legal matters, and the dispute resolution service will be in place as well.

I think we have struck the right balance. Parents, this Committee and the Assembly will not be asked to sign off on the proposals until the legislation goes before the Assembly. There are many issues that I will come to this Committee with, and on which I will lock horns with members and fight my corner, but I do not want to lock horns with anyone on this issue. Everybody agrees that we must get this right, and I think that we can get it right, on the principles of arresting bureaucracy and providing a better system and better educational outcomes for children with SEN. Therefore, I have put proposals before you today which, I believe, make an improvement. We are in conversation mode here, and we are in listening mode.

Mr Craig: I do not think that you will find any of us in disagreement with what you are saying, Minister. I have one final question. I will return to the Vice-Chair's concerns, and I will declare an interest as a member of three boards of governors. Huge pressure will be put on them, rightly or wrongly, and I am not arguing the point. Will assistance and training be given to governors and school management on how the new system will operate, and, more importantly, on their specific responsibilities within that system? This could all fall apart if people do not understand their responsibilities.

Mr O'Dowd: The simple answer is yes. We announced yesterday that we have put measures in place to support boards of governors, because, in fairness, to them, they are all voluntary. They are the sector in education that has not been resourced or equipped.

The buck stops with the boards of governors in that, if something goes wrong, the finger of blame is pointed at them regardless. Let us equip them and ensure that they have the skills that they need. Let us also reassure ourselves that the vast majority of our primary schools already in position are very effective at delivering SEN. The majority of our post-primary schools are also very effective in

delivering SEN, and, following discussions with the Education and Training Inspectorate, they are all improving. The schools that are inspected are improving. We are on the right pathway regarding these matters. The task that we have set ourselves is not insurmountable. The simple answer, Jonathan, is yes. We have a responsibility to support boards of governors.

Mr Lunn: My question, Minister, was on the statutory duty on the health and social care trusts, but you have dealt with that issue as best you could. I hope that your discussions with other Departments will bear fruit.

It is quite hard to see how the Department of Education has a statutory duty in this matter, but not the Department of Health. They must be equally important. Having said that, we will have to wait and see where this goes. You said that you are conversation mode, so, obviously, you are.

I do not think that I have ever seen a paper quite like this. It is properly laid out. There is the original proposal, the concept behind it, the proposals following consultation, the current legislation and the legislative change proposed. Even I can follow that.

The Chairperson: Are you saying that you think that it could never have been produced by the Department?

Mr Lunn: I do not care who produced it. It is a good approach. We can follow it, dissect it and come back to the Minister on it. I am glad that you are here in conversation or listening mode. I will not say that that is a change, because it is not a change. It is a good approach.

Mr O'Dowd: I would like to take credit for it, and I am tempted to do so. However, Irene and Dorothy should take the credit.

The Chairperson: Did you only see it this morning as well, Minister?

Mr Lunn: I have no question for you, Minister.

Mr Kinahan: I congratulate the Minister and staff on the report. It is well laid out.

The Chairperson: This is going too far.

Mr Kinahan: I have a big concern about resources. One or two schools that I have been to have been struggling to find time to plan how the school works. Based on adding all of the training that will be needed for teachers, including on legal rights and on the needs of others, are you planning more resources to go to schools to free up teachers' time, or, are you going to put more into teacher training so that they arrive at schools with the necessary training? Is there a cost to this that is known?

Mr O'Dowd: There is a cost, and, over the past number of years, we have been providing courses regarding SEN. That has not been done in order to direct people towards this framework, because it has not yet been agreed; it has been done to alert schools and work with them to disseminate best practice where it exists so that they are constantly raising their profile regarding SEN. The figures are in front of us, and we have to accept them. One in five young people has special educational needs. They are in our mainstream schools. Our special schools are excellent examples of provision. However, regardless of where our mainstream schools are, one in five of their pupils will have special educational needs. Schools have to recognise that that is the situation, and we have to meet those needs.

I accept that schools are under-resourced. I have never said that the education boards' budget is sufficient, and, in fairness to the Executive, they have not said that either. We have to work and plan within our resources. The framework in front of us allows us to do that. If more resources become available, we will direct them to where the need is most appropriate at that time. As I have said, the vast majority of our primary schools are already there, and the majority of our post-primary schools are already there. More training is required for existing teachers, and, during our initial training programme, we will be concentrating on the SEN project as well. There will be a launch of a programme of work between St Mary's and Stranmillis in relation to SEN. When is that planned to come into operation?

Mrs Dorothy Angus (Department of Education): Very soon. As soon as the budget is settled.

Mr O'Dowd: This flows across a number of budget lines, of course. I will not sit here and say that we have all the resources in place. We do not. None of the Departments in the Executive currently have all of the resources that they require.

Mr Kinahan: I was really just looking for more help for teachers when they are under pressure to know that, if they are stuck, they will be able to ask for more resources so that they can get us to the starting point that you want.

Mr O'Dowd: In future, education and library boards, or ESA, will have a statutory duty to publish the resources available to support schools in their delivery of SEN provision. As I said, there are phases 1, 2 and 3; there is a school responsibility, there is a school and ESA board responsibility and then there is an ESA board responsibility. Therefore, all the pressure does not fall on the schools. There is a cross-sectoral support mechanism in place, but, I welcome the fact that a majority of our schools are already there. We just need to continue to offer support and training, and understand that special educational needs will be part of our mainstream education system. Perhaps it is the term "special" that sets the provision aside.

Miss M McIlveen: This will take you by surprise: I welcome this paper.

The Chairperson: Now, that is going very far.

Mr O'Dowd: I have a couple of hours —

Miss M McIlveen: I will add the caveat that I have given it only a cursory view. The Minister may be aware that we met a number of the groups who came to the Education Committee and who also came to the all-party group on children and young people with learning disability, with the addition of parents. It was quite telling that their concerns were about children's rights, statementing, and the annual review. I note that the annual review has also been addressed in this paper, and I welcome that at this stage. There are issues with children who currently have statements and there are concerns about the transition to a new process. What thought has been given to that?

Mr O'Dowd: Originally, we proposed a two-year transition. We are now proposing a five-year transition, with different stages within that period. If we have legislation in place by September 2013, and I will just use that as a proposed date, then for five years after that, children with statements will remain in the statementing process for the first two years. After that two years, they will move into the new process, but that does not mean that their statements will be taken from them. They will be subject to the same reviews as other children. They will be subject to the same appeals mechanism and rights.

Currently, a child with a statement could have that statement removed. That is within the legislative process. It can take place if educational needs have changed, and the only reason is because the child's attainment and life opportunities have improved. Paragraph 26 of the paper sets out the proposed way forward for the transition over a five-year period. For the first two years, the statement remains, and over the latter three years, it would move to the new process, but with full legal entitlements in place.

Miss M McIlveen: Do you have a draft definition for the terms "complex and/or multiple needs"?

Mr O'Dowd: We were proposing to bring forward a legislative definition, but we are now proposing to use the current legislative definition of special educational needs. We are not changing the current legislative definition. The issue raised concerns, understandably, because parents not knowing what is in front of them causes concern. The legislation that defines special educational needs is there, and we propose to keep that in place.

Miss M McIlveen: You also referred to early identification officers in preschool settings and the fact that you have established pilot teams. Are those in place and how many are involved? What will that process be and how long will it take?

Mr O'Dowd: They are in place, but perhaps Dorothy or Irene could answer that.

Mrs Irene Murphy (Department of Education): Each of the five boards has a number of pilot schemes; there are two in early years settings and there are slight variations. Some are focusing on SEN children across a range of settings and others are focusing on a particular special educational need. They are all in place and will be running for two years from the outset. They will be evaluated by the Education and Training Inspectorate. So, there will be a formal evaluation at the end of the time.

The Chairperson: Before we go to Daithí, and I suspect he will not be critical, you are probably not a reader of 'The Daily Telegraph', Minister, but a story in yesterday's edition was worrying. If you omit the fact that the story was based on what was happening in England, and you did not know otherwise, you would have thought that you were reading about the process that we have been undergoing for special educational needs. The headline was:

"Thousands to be struck off special needs list".

To follow up on Michelle's point, I welcome the fact that the transition period has been extended to five years. That will give confidence to parents with a statemented child that a process is not being put in place that will disadvantage them. However, can you assure us that the process will be conveyed in the best way possible? I suppose that I am taking up Trevor's point that the way in which the paper has been presented to us today is extremely helpful, because it sets out the original proposal, the concerns raised and the changes. What plans do you have to convey that to parents? Will it be left to education and library boards or boards of governors to do so? How do we, collectively, convey the message about what is being done, so that we do not have an easy-to-print headline or statement, such as this, which will cause undue concern to many thousands of families?

Mr O'Dowd: My colleagues alerted me yesterday to proposed or draft changes taking place in England. We have been having this debate for four or five years. I suspect that 'The Daily Telegraph' headline may have reflected the concerns that we had four or five years ago. Indeed, when I was last before the Committee, a headline by one of our broadcasters raised concern among parents that we were, in some way, going to subject them to the removal of statements. If the Committee is content for me to do so, I am happy to make the proposals that I have brought before you available on the Department of Education's websites. That will allow parents to discuss them further.

I do not want to suggest that I am going into another formal consultation process, but parents and advocacy groups should be aware of our proposal. I am awaiting the Committee's report. However, if someone contacts me or writes to me about their concerns, I will not discard their letter; I will take people's views on board. Paragraph 26 of the paper goes into detail about how we propose to make the transition from the present statementing process to that which will happen under CSP. That will reassure people that there is no plan to remove statements from anyone here.

The Chairperson: That is helpful. The Committee had considerable discussions with a variety of organisations at the event that we held last week and at the special educational needs event, with which Dorothy kindly helped. That was at the beginning of the process and was probably one of the largest special educational needs evidence events ever held in this Building. You are right to say that the headline that I quoted was more in line with what was being said then. Would it would be helpful for us to circulate your correspondence today to those groups, which included the Children with Disabilities Strategic Alliance and the Children's Law Centre — all the organisations that you have seen as Minister? Are you happy for us to do that?

Mr O'Dowd: I have no difficulty with that. This is not a secret process. I will add the caveat that we are reaching decision time. Politicians, quite rightly, have to listen and consult, but we also have the onerous duty to make decisions. We are now at the point at which, as I said, I would like to bring a policy memorandum to the Executive by July. Any policy that flows from that will go through the full consultative process.

The Chairperson: OK. We will ensure that we forward the correspondence with the same caveat — that this is not us or the Department having another consultation, but that we would appreciate views on elements of the proposals. That will be very helpful, thank you.

Mr McKay: May I agree with you and other members, Chair, that the Minister is doing an excellent job on this and other issues. *[Laughter.]* I picked up on the point you made during Question Time yesterday, John, about the language used to describe special needs units. We have all used such language, so I welcome that you are thinking outside the box about the need to review certain

terminology due to the sensitivity attached to the issue. I was going to make the point that Danny made about resources and the concerns that stakeholders raised about capacity and the greater workload that teachers will have. Have the unions raised any concerns in that regard? As regards ensuring that there are resources, you refer to the common funding scheme review. Will you elaborate on that a bit more?

Mr O'Dowd: In the initial stages of the review, unions, like many other groups, had concerns and wanted greater detail about the policy and where it is taking us. At the next stage, I am sure that they will make their views heard again. In fairness to trade union representative bodies, they are on the same page as everybody else. They want the system to be improved and they want a more effective delivery of services to young people. There is recognition that resources are not what everyone would want them to be.

The common funding formula review will reflect that. There was a proposal in the original document to delegate further funds from the boards to schools for special educational needs. That raised some concerns among parents that the money might be diluted through the entire school system rather than addressing the needs of their children. I am proposing not to move forward with that. I am proposing to allow the common funding formula review to look at it, as well as all of the other aspects of funding going to schools. It will be an independent review, and it will come back to me with its belief on the best way forward for the common funding formula. I have no doubt that it will comment on the special education element as well.

The Chairperson: I am just checking with the Committee Clerk. We all have concerns about the common funding formula. At the end of the day, any formula creates winners and losers depending on how you apply it. We have invited a number of organisations to come on 20 June to make representations to us so that we can begin to try and understand the component parts of the common funding formula. We need to pay particular attention to how that point relates to special educational needs.

Are there any other questions on that? Minister, do you want to conclude with any other comments and then we will take any other specific questions?

Mr O'Dowd: We have covered a number of areas. We have taken on board concerns around the annual review. We have set out in detail how those annual reviews will take place. I am still of the view that an annual review should not take place automatically. However, I want to ensure that, under legislation, a parent or a school has the right to call for an annual review.

I have also emphasised that it can sometimes be difficult for parents with a close working relationship with a school or a school principal to challenge that school. I am going to put the onus on the board or ESA to write to parents and schools annually to alert them to their right that, if they wish to have an annual review, they can do so by writing to the board, so that it is not seen as a conflict between schools and parents. The working relationship between schools and parents is mostly good. However, I understand that there are parents who may not, for whatever reason, have the skills or confidence to ask for a review. When the board writes to them, their legal rights will be set out in plain English, or plain Irish maybe —

The Chairperson: We would not understand the latter. *[Laughter.]*

Mr O'Dowd: — to ensure that they are aware of their rights and how they can advocate those rights.

As regards the transition points, the legislative change proposed is in respect of only the definition of CSP.

I believe that there is an effective partnership between the Department of Education and the Department of Health. I am not just saying it, but in the engagements between the Minister of Health and me, and between my officials and his, I have been satisfied with the working relationship, and I think that we can build on it.

As I said, I am of the view that, in government, it is best practice to have a dispute avoidance/resolution service not instead of but in front of any legal process. There have been concerns that the dispute resolution service is too closely connected to the boards or to ESA. I am of the view that there should be one in place, but it should be completely independent of those bodies.

The way to get around that may be to put the dispute resolution service out to tender. The community and voluntary sector may be interested in applying for that, but its terms of reference will be set out.

There is another interesting programme in England which involves the rights of the child to ask for a review. That has been promoted by the UN Convention on the Rights of the Child, and the Children's Commissioner and a number of advocacy groups have mentioned it to me. We are aware of a pilot scheme in England where that is in place. From the outside looking in, I think that it is an exciting proposal that a child or young person would have a right to ask for an appeal. Therefore, we are going to monitor that pilot scheme in England and learn from best practices there, and I will be keen to bring a similar system into play here.

The Chairperson: Daithí may have made reference to the chief inspector's report of 2010, which identifies much poorer-quality provision in around 25% of mainstream schools. I accept that the majority of provision is reasonably good in primary schools, but 25% were identified as having poor-quality provision and not having a dedicated SEN teacher, and there was little evidence of inclusive training for children with special educational needs. The 2005 Order strengthened the rights of the child to mainstream education, but the evidence is that parents are removing their children and putting them into special schools, hence putting more pressure on our special schools. In light of all that, where will our special schools be? How will we deal with the 25% of schools that are not achieving in mainstream education?

One particular worry, and it was raised in a school in your constituency, Ceara School, was that there is no enrolment number for a special school, whereas we have enrolment numbers for every other school, and you have to have a process of applying to get additional places. However, when it comes to a special school, if the child is deemed to require a special school, we just keep piling them in. That is not the right phrase, but there is a major concern in special schools that they just continue to take those children, and they are being stretched. You have been to the school, Minister, and you are well aware of it as a particular example. There are others that are simply bulging at the seams, and they have very complex issues.

Mr O'Dowd: The 25% or thereabouts in the 2010 report were not achieving high standards, and there were varying degrees even within that figure. Therefore, we could reduce that percentage down to those who are at an unacceptable standard, which would even be a lower percentage. I believe that the training and capacity-building that we have put in place and the resources that we have put in place — limited as they may be — will show continued improvement across the primary and post-primary sectors and the sectors included within that. That will give confidence to parents that SEN can be provided in mainstream schools.

I am keen to support and promote the work of our special educational needs schools, as is the Committee. There is parental preference in these matters, and parents have that right if need be. The issue of enrolment numbers in our special schools has been raised with me, and they have their advantages and their disadvantages. That is something that we need to explore in greater detail in the future. However, we have to assure ourselves that we have properly resourced facilities in place for parents when they make the choice that they want their child who has the required needs to go to a special educational needs school and that we have sufficient and properly resourced special needs schools in place. However, that is something that we need to return to in more detail.

The Chairperson: And just on that point, I know that you have clarified the point in relation to capital yesterday, but you indicated at the time when the audits were being done that you were also looking at special schools. I declare a particular interest in a school in my constituency, which you kindly visited. Are you near to reaching a conclusion as to particular capital needs within special schools?

Mr O'Dowd: Yes, I am.

The Chairperson: Will that be separate to what you have said? Will you bring a capital proposal in totality with a special educational needs element, or will it be special educational needs on its own? How do you —

Mr O'Dowd: I have to say that, when I visited the school in question, it focused my mind. I was shocked at the provision. It is excellent as regards the dedication of the staff, parents and young people, but the facilities that they are operating out of are not acceptable. That focused my mind. At that stage, I thought that I might have to bring forward a special needs building programme ahead of the other capital, because of area planning. I am now of the view that, given the time frame that I am

working in and the need to spend my capital budget in this comprehensive spending review (CSR) period, I can make an announcement which will include special schools.

Ms Boyle: I welcome the Minister. I suppose that I have to say that you are great, too. *[Laughter.]* I thought Michelle was going to, you know, we were going to have a replay, another kiss. *[Laughter.]*

Miss M McIlveen: That certainly will not be happening.

Ms Boyle: Under the current legislation, children who are statemented, if they go to schools — I am from a border area, as you know, and that is the reason why I am asking the question — from another jurisdiction, from the South, at the minute are not entitled to a statement of needs. Are there any plans to change that, so that children who attend school in the North but live in the South will be entitled to CSPs? I am talking about children attending schools just a mile from their home.

Mr O'Dowd: As you know, we are looking at the cross-border survey with Minister Quinn. We will discuss it in greater detail at the North/South Ministerial Council meeting on 30 May. We are looking at school provision in its totality. Parents will be asked what provision they will be seeking, going in either direction. Then both Minister Quinn and I will study that and look at the resource implications, etc, of that report. Any discussion of SEN, or any other educational needs, will take place as a part of that overall review, study and survey of parental demand in the border areas.

Ms Boyle: Is there a time frame?

Mr O'Dowd: We have planned that the survey will be out in the early autumn and report to the next North/South Ministerial Council meeting in January 2013.

Ms Boyle: So maybe 2013?

Mr O'Dowd: I am not saying that there will be a definitive response to the SEN issue in 2013, but the survey, the implications of it and what plans we plan to take will be in 2013. If a significant demand for SEN services is identified, then Minister Quinn and I will have to come to a conclusion as to how we deal with that.

The Chairperson: I have just one other question, Minister. Then I will take any other questions that members want to ask, just to mop up.

One of the criticisms which the Committee has had over a period of time is trying to align where budget allocations are made, whether in relation to early years or anything else. Particularly on this issue, I am glad that we have been able to keep the topic of money almost to the very last. Normally, it is the issue that is asked about first. However, since the introduction of the Education and Libraries (Northern Ireland) Order 1986, the amount of money spent on special educational needs has dramatically increased. What financial planning is there around the introduction of those proposals, looking forward to the end of the five-year transition period? Does the Department see that there is either a financial benefit or a deficit that will need to be addressed as a result of the introduction of these proposals?

Mr O'Dowd: This is one of the few documents that has not been budget-driven or had an element to it that says that we need to reduce costs. This has been about services, thankfully. No, we have not looked at this with the mindset of whether there will be a reduction on costs or an increase in costs. If there is an increase in costs, that will have to be met. We are even seeing increased costs now. I noted yesterday that the boards have reported back to me that there is upwards of £6 million in additional pressures each financial year, particularly the Belfast Board, which has a significant number of young people travelling in for special educational needs services. If there is a cost increase, then that cost will have to be met. That is the reality of the situation.

As I said in reply to a number of questions, special educational needs is part of our education service. We want the best outcomes for all our young people. If young people have additional educational needs or special educational needs, those costs will have to be met. However, as we introduce the concept that we have before us, I do not believe that we will see a significant cost implication to that. We recognise, going into the future, that at least one in five of our young people will have special educational needs. I want to see those identified as early as possible and dealt with. Perhaps, if they

were identified as early as possible and support given, there could be a cost reduction, not only for my Department but for other Departments, as the young people develop into young adults.

Mr Lunn: This is a different topic, Minister. The papers mentioned Middletown and your willingness to discuss Middletown with us. You obviously know that the Committee had a very successful visit to Middletown. The impression of all of us who were there — although I have not actually heard from everybody — was that we were mightily impressed with what goes on down there. Perhaps the frustration around Middletown is that it has not achieved its full potential. In fact, I think that we are talking about 17 staff, whereas the original notion was that there would be between 60 and 70. The facilities have not been built, and so on. My question is pretty simple: between you and Minister Quinn, what are the prospects for further development at Middletown? Everything that I hear about it, and I hear it from people in Glenveagh School and so on, is how much they value the input of Middletown. The more you put into it, the more you will get out of it. It really has a major role to play in some of the things that we have been talking about today. Where do you see its future?

Mr O'Dowd: Middletown has proven to be a successful resource for autism. I think that it has got caught in the eye of a political storm. Some of that political storm has resulted in a lack of decision-making about its future. However, the key to Middletown is that it has to meet the needs of this jurisdiction and Minister Quinn's jurisdiction. Minister Quinn's needs are slightly different to our needs in this jurisdiction. Autism services have progressed steadily in Minister Quinn's jurisdiction since the formation of Middletown, and he requires a slightly different service out of it than we require here.

Both of our Departments have been studying a detailed paper on the future provision at Middletown. I have signed off on what I believe we require, and Minister Quinn will have to make his decision. That paper will come before the NSMC in May. If we reach a final decision then on its future direction, it will take Middletown out of the eye of the political storm and allow it to carry out the services that each jurisdiction needs, which will be to the mutual benefit of both jurisdictions. Unfortunately, I cannot go into detail on that until Minister Quinn declares his intentions.

Mr Lunn: Is there a North/South council meeting this month?

Mr O'Dowd: I think that it is on 30 May. It is in the education sectoral format.

The Chairperson: I refer Trevor to some answers that were given by the Minister to questions that I asked about Middletown. I wanted to know the number of children from the Republic who attended in the past three years, and the answer was nil. We are not going to get into a debate today about Middletown, but maybe we should look at whether it is properly located. There are a whole host of issues around the problems and so on, and that is one indicator of the challenges. However, some of us clearly have had the benefit, as the Committee had, of going to see the facility, and we thought that that was right and proper. We could not be anything but impressed by the dedication of those who are involved there, and that is no reflection of some of the criticisms that we have had of it in the past.

Mr Kinahan: I have two questions that are not really related. One of our briefing documents says that there are around 53,000 non-statemented SEN children. How accurate is that when you are talking about assessing and planning for the future? Is that a good figure?

Mr O'Dowd: The SEN register involves children with wide and varying degrees of need, and the vast majority of children on the SEN register do not have a statement. They have individual education plans in their schools, and their needs are met under the current system. When I say that one in five of our children have special educational needs, that is what I refer to.

Mr Kinahan: Is there a place for the ombudsman in the system? That has been talked about at the Committee for the Office of the First Minister and deputy First Minister, and it seems to be too slow to be able to help here should parents want it to.

Mr O'Dowd: I hope that the disputes resolution service being in independent format and the SENDIST review still being in place, which is quite a robust legal format, and some may argue that the nature of it can be intimidating to parents and children — that falls under the remit of the Justice Minister — those two mechanisms give surety that a robust appeals mechanism is in place for parents.

Mr Rogers: I will go back to the annual review. You talked about effective partnership, and we know that, in 95% of cases, there is an effective partnership between home and school, and the optional

thing is OK. However, for a small percentage, the annual review can be an opportunity for the school to get the parents in, and so on, and I would caution against the notion of making it totally optional. That is just a comment. My other point is to welcome the news that you have awarded 25 nursery places to Bronte Primary School.

Mr O'Dowd: That area was identified as having need, and we had to meet that need. I would not use the term "optional". The legal rights of the school and the parent are equal in the sense that either side can call for an annual review, and I have taken it away from the school and the parent to inform the other side — the boards will take charge of that. If parents want an annual review, it will be every year, and no one can veto that. If the school seeks an annual review, no one can veto that either. I am concerned that sometimes we can be feeding the machine of review upon review without change. I am proposing the way forward that I have set out. I know that there is some concern that the annual review should automatically be in place or should be there every year regardless, but I am not sure that that is the best way forward for us.

Mr Rogers: It reassures me that, if the school requests an annual review, it can have it.

Mr O'Dowd: Yes, certainly, as can the parent.

The Chairperson: Minister, I thank you, Dorothy and Irene for your time, your openness in being able to answer the questions and the paper that you have given us. We will give it serious consideration. If we need any clarification, I know that your officials will be only too glad to help, and we will then agree how to progress.

Mr O'Dowd: Thank you, Chair.